THE HONUORABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION Nos.27028 OF 2005 AND 1342 OF 2006

DATED: 28-01-2006

WP.No.27028 of 2005

Between

VINEDALE DISTILLERIES LTD.,
A Company incorporated under
Provisions of the Companies Act,
1956, having its registered office
at Gaganpahad, Bangalore Highway,
Hyderabad 501 323, rep. by its
Chairman and Court Commissioner
(Receiver), Mr. Satish Kumar Agarwal,
S/o. Late Sri Omprakash Agarwal,
R/o. Plot No.14, Road No.5, Trimurthy
Colony, Mahendra Hills, Secunderabad.

...PETITIONER

AND

RESERVE BANK OF INDIA, rep. by its
Chief General Manger, having its office
at Cuffe Parade, IDBI Towers, Mumbai
and others.

...RESPONDENTS

WP.No.1342 OF 2006

M/s. Vinedale Distilleries Ltd., Having

Its office at 1B, Sampathji Apartments,

6-3-855/10/A, Ameerpet, Hyderabad.

Rep. by its Director/Court Commissioner

Sri Anil Kumar Aggarwal, S/o. Late Om

Prakash Aggarwal.

…PETITIONER

AND

Authorized Officer, DENA BANK,

M.G. Road, Secunderabad and

Others.

…RESPONDENTS

COMMON ORDER:

Vinedale Distilleries Limited – petitioner in WP.No.27028 of 2005, represented by its Chairman and Court Commissioner,

Mr. Satish Kumar Agarwal, earlier filed WP.No.26369 of 2005 seeking a Writ of Mandamus to declare the inaction of the respondents/Dena Bank authorities in not giving effect to the guidelines issued by the Reserve Bank of India (RBI) on the One Time Settlement (OTS) Scheme for SME Accounts dated 03.09.2005 issued in proceedings

RBI/2005-06/153 insofar as the petitioner's company case is concerned and in not accepting the proposals submitted by the petitioner company for OTS in terms of the said guidelines pursuant to the representation of the petitioner company dated 13.10.2005 as illegal and arbitrary. In continuation of the earlier proposal dated 13.10.2005 petitioner also filed another representation on 28.11.2005. The said writ petition was disposed on 12.12.2005 without expressing any opinion on the merits of the case as to whether the

petitioner is entitled for OTS as per the guidelines of the RBI, as the matter requires to be considered and disposed of in accordance with law by the Dena Bank authorities and the Dena Bank authorities were also directed to consider and dispose of the representation of the petitioner dated 13.10.2005 in accordance with law within a period of six weeks from the date of receipt of the said order. Thereafter, the fourth respondent in the said writ petition made the following order:

"**DENA BANK** BANGALORE REGIONAL OFFICE

SONA TOWERS, 1st Floor,

71, MILLERS ROAD,

BANGALORE – 560 052

BRO/RML/1500/2005 Date: 09/12/2005

Sri.S.L. Narayan,

Director,

Vinedale Distilleries Ltd., WITHOUT PREJUDICE

Gaganpahad,

Bangalore Highway (NH-7),

Hyderabad – 501 322

Dear Sir,

Re : ONE TIME SETTLEMENT (OTS) OF THE DUES OF VINEDALE DISTILLERIES LTD. (HYD.)

We refer to your letter No.VDL/DB/OTS/05 dated 28/11/2005 offering to settle the captioned account under OTS for Rs.250,00 lakhs.

We wish to inform you that our Head Office has rejected your said OTS offer.

Yours faithfully,

Sd/-

Regional Manager"

The said order dated 09.12.2005 has been questioned in WP.No.27028 of 2005 in rejecting the proposal of OTS made by the petitioner as illegal and arbitrary and also questioned the consequential notice issued under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act') as illegal and arbitrary.

This Court by order dated 21.12.2005 while admitting the writ petition granted interim order in WPMP.No.34733 of 2005 directing the respondent bank authorities not to take any coercive steps and not to pass any orders under Section 13(4) of the SARFAESI Act subject to the condition that the petitioner deposits a sum of Rs.70,00,000/- within four weeks from 21.12.2005 and if the said amount was not deposited within the prescribed time the interim order automatically stands vacated and the respondent bank authorities were permitted to take appropriate proceedings under the SARFAESI Act.

Learned counsel for the respondent bank authorities submits that the four weeks period expired on 18.01.2006 but the petitioner company has not paid any amount. Only on 19.01.2006 the petitioner company addressed a letter to the General Manager, Dena Bank, Asset Recovery Department, Bombay – Kurla Rao enclosing a cheque for Rs.70,00,000/- bearing No.705303 of State Bank of Mysore, Sarojini Devi Road, Secunderabad for the OTS settlement to be made as per the directions of the Andhra Pradesh High Court. In the letter it is further stated that if the respondent bank authorities are agreeable to the OTS settlement as per the RBI guidelines, the cheque may be encashed.

Learned counsel for the petitioner submits that the guidelines for OTS issued by the RBI are statutory in nature and binding on all the nationalized banks and when the petitioner wanted to settle the amounts the respondents are requested to approach the Delhi High Court and seek a direction for settlement as the matter in CS(OS).1514 of 1994 is pending.

This Court is of the opinion that the orders of the Delhi High Court will not come in the way of the Dena Bank to proceed with the recovery proceedings under the SARFAESI Act and also as the interim order of this Court was not complied, the respondent bank has rightly passed orders dated 24.01.2006 under Section 13(4) of the SARFAESI Act as all the

concerned of either the Vinedale Distilleries Limited or the Sanman Distributors have failed to pay the bank amounts pursuant to the notice under Section 13(2) of the SARFAESI Act.

Questioning the notice dated 24.01.2006 issued by the Dena Bank, WP.No.1342 of 2006 has been filed by M/s. Vinedale Distilleries Limited – petitioner, represented by its Director/Court Commissioner, Sri Anil Kumar Aggarwal, S/o. Late Om Prakash Aggarwal.

I have heard both the learned counsel appearing for the petitioners, learned counsel appearing for the RBI, learned counsel appearing for the Dena Bank and the learned counsel appearing for the M/s. Sanman Distributors – fifth respondent in WP.No.1342 of 2006.

Several arguments have been advanced before this Court by the respective counsel for the petitioners stating that without withdrawing the application in O.A.No.29 of 2004 before the Debt Recovery Tribunal under Section 19(1) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1933, the respondent bank authorities cannot initiate proceedings under the SARFAESI Act. It is further stated that under Section 13(3A) of the SARFAESI Act without considering the objections filed by the borrower within one week from the date of receipt of the representation or objection the secured creditor cannot take any further action under Section 13(4) of the SARFAESI Act.

Learned counsel appearing for the Dena Bank submits that the objections of the petitioners have been considered but the objections of the fifth respondent in WP.No.1342 of 2006 have not been considered.

Learned counsel for the petitioners further submits that any security interest accrued on the agricultural lands in favour of the respondent bank under the provisions of the SARFAESI Act cannot be made applicable and therefore, the orders passed under Section 13(4) of the SARFAESI Act are illegal and unsustainable.

The Authorized Officer of the Dena Bank issued a notice dated 24.01.2006 to Sri

Anil Kumar Agarwal, petitioner in WP.No.1342 of 2006, under Section 13(4) the SARFAESI Act, wherein Item No.2 is extracted:

> "2. All that piece and parcel of **agricultural land**, situated at Premavatipeth Village, Hyderabad west Taluk, Hyderabad District, Andhra Pradesh, bearing Survey Nos. and admeasuring as follows:
>
> Survey No. Extent of Area
>
> 57. 11 Acres 9 Guntas
>
> 58. 4 3
>
> 59. 9 17
>
> 60. 4 21
>
> 61. 1 37
>
> 62. 6 31
>
> 63. 4 13
>
> 64. 8 16
>
> 68 (Part) 4 23
>
> 86 7 26
>
> Total: 62 36
>
> along with buildings and structures standing thereon."

Having stated Item No.2 properties as agricultural land in the above notice, the same has been mentioned in the paper notification dated 24.01.2006 as factory land, which is extracted as follows:

> "2. All that piece and parcel of **factory land**, situated at Premavatipeth Village, Hyderabad west Taluk, Hyderabad District, Andhra Pradesh, bearing Survey Nos. and admeasuring as follows:
>
> Survey No. Extent of Area

57 11 Acres 9 Guntas

58 4 3

59 9 17

60 4 21

61 1 37

62 6 31

63 4 13

64 8 16

68 (Part) 4 23

86 7 26

Total: 62 36

along with buildings and structures standing thereon."

It is pertinent to note that the above two notices were signed by the same Authorized Officer of the Dena Bank.

I am of the opinion that all the issues raised in these two writ petitions cannot be decided by this Court as there is a legal bar for OTS at the instance of the petitioners in view of the orders passed by the Delhi High Court in FAO(OS) No.265 of 1994 dated 13.02.1995.
As against the orders passed in CS(OS) No.1514 of 1994 Sri Satish Kumar Agarwal and others filed an appeal in FAO(OS) No.265 of 1994 before the Division Bench of the Delhi High Court in which Vinedale Distilleries Limited and others were respondents and it is just and proper to extract the said order:

"…On the basis of the our findings on Points 1 to 3 and Point 4 and in the light of our discussion on Points 5 to 8, we are of the of the view that while continuing the Aggarwal group in management of Vinedale, various conditions must be imposed.

There is one more hurdle here for our appointing any person as a Receiver or group of persons as Joint Receivers and that is because of Section 22 of the Sick Industries Companies (Special Provisions) Act, 1985. That Section requires sanction of the Board of Industrial and Financial Reconstruction

(i.e. BIFR). We propose to await the sanction of the BIFR and for the purpose of enabling the BIFR to pass appropriate orders, we shall indicate what order we propose to pass after receiving its sanction.

1. The Aggarwal group of directors of Vinedale shall continue in management and control of Vinedale, the nominee of the BIFR on the Board shall also continue till such time as the BIFR would want him to continue.

2. The Aggarwal group of Directors will have to be Joint Receivers the Vinedale Company and shall be answerable to this Court for their actions or omissions.

3. This Court shall be entitled to issue directions to the Receivers for implementing the schemes/orders of the BIFR/AIIFR. This Court does not intent to do anything which will conflict with the powers of the BIFR/AIIFR.

4. The Sanman group can nominate a person on its behalf to be present at every meeting of Vinedale, whether it be the meeting of the Board, Annual General Meeting or EOGM or any other statutory meeting. The said nominee shall not be entitled to vote but shall be entitled to receive the agenda or connected papers of the meetings and offer his suggestions, if any, he shall also be entitled to call for a look into correspondent. Account Books or Bank Accounts for the purpose of knowing the details of the management.

5. The Receivers shall manage and control the Vinedale as representatives of this Court and shall file quarterly Reports in this Court in respect of all their actions or decisions and it shall be open to the Sanman group to file its objections. This Report shall refer to decisions taken, the turnover, the investment/loans, the contracts, the financial affairs, taxes and duties, income and expenditure etc.

6. The Aggarwal group shall have to furnish Bank guarantee in a sum of Rs.2 crores within the time to be specified by this Court to meet any contingencies that might arise on account of orders to be passed by this Court.

7. The Sanman group which has custody of the original share certificates of Vinedale/four investment Companies (i.e. Deccan Securities, Deccan Holding, Yogeshwar and Chamunda) shall not encumber the certificates nor transfer nor part with them without sanction of this Court.

8. It will be open to the Receivers (the Aggarwal group) to seek appropriate orders from this Court.

9. It will be open to the Sanman group to file objections to the Reports filed by the Receivers and seek appropriate directions.

10. Future orders in these suits/IA shall be passed by the learned Single Judge who shall be entitled to pass orders, even in modification of the orders passed by us in this order.

A copy of this order will now be forwarded to the BIFR which may, after issue of notice to the parties, pass appropriate orders under Section 22 of the Sick Industries Companies (Especial Provisions) Act, 1985. It will be open to the BIFR to make any suggestions for the consideration of this Court, in regard to the appointing the Aggarwal group as Joint- Receivers.

We do not, however, think it necessary to await the sanction of the BIFR for directing the Aggarwal group to furnish bank guarantee in a sum of Rs.2 crores as stated earlier and they shall do so within three months from today.

Similarly, the Sanman groups are hereby restrained from today from transferring or encumbering the share certificates of Vinedale and of the four investment companies, namely, Deccan Holdings, Deccan Securities, Chamunda and Yogeshwar.

Aggarwal Group will not enter into any agreement of sale or any transfer or encumber immovable properties of the Vindale or of the four investment companies without the sanction of this Court. This direction shall also be operative from today.

The interim order passed by the Bombay High Court on 14.06.1993 shall continue to be in force till we pass final orders in these applications after receipt of the orders from the BIFR but this will not amount to disturbing the management of the Vindale by the Aggarwal Group.

We also think it is necessary to have an inventory made of all the movable and immovable properties of Vindale Distilleries and for this purpose we appoint Mr. C. Sadasiva Reddy, Advocate (Telephone No.225110), Andhra Pradesh High Court to be the Commissioner to prepare an inventory in regard to the movable and immovable properties of Vinedale. This will be done after issuing appropriate notice to both the parties or their respective Advocates on Record. Commissioner should send notice to Mr. S.K. Aggarwal on behalf of the Aggarwal Group, Mr. Shankar Sanyal at his Bombay address and Mr. Jagdish Hinduja at his Bombay address. Initial fee of Rs.15,000 is fixed to be paid to the Commissioner which will be paid by Mr. S.K. Aggarwal on behalf of the company.

BIFR will fix a date for hearing within three weeks from today with a view to enabling the BIFR to pass final orders within six weeks.

It will be helpful if the BIFR is able to pass its orders within six weeks from today.

The appeal and the I.As in the transferred suits are disposed of accordingly for the present. Post them on 7.4.1995 for further orders, on receipt of the orders of the BIFR."

As against the said order S.K. Agarwal filed SLP before the Supreme Court of India and the Honourable Supreme Court made the following order:

"Issue notice.

Issue notice also in the application of stay.
The caveator (respondent No.7) has filed counter affidavit.

The High Court, during the pendency of the suit as an interim measure, while continuing the Aggarwal Group to remain in management of Vinedale, imposed 10 conditions (detailed at pages 143 to 145 of the paper book). The grievance of the petitioners at this stage relates to conditions No.2, 4 & 6.

We have heard learned counsel for the parties.

While maintaining the interim order of the High Court for continuing the Aggarwal Group in the management of Vinedale, we make the following substitutions/modifications to the above mentioned conditions till further orders from this Court:-

a. The words receivers or joint receivers wherever appearing in the operative part of the order of the High Court shall be read as "Court Commissioner".

b. That the provisions of Order 40 CPC shall apply mutates mutandis in so far as the "Court Commissioners" are concerned.

c. Condition No.4, shall be substituted by the following:

"That the High Court may nominate a person belonging to the Sanman Group to be present at every meeting of Vinedale, whether it be the meeting of the Board or Annual General Meeting or EOGM or any other statutory meeting but the said nominee shall have no right to vote at the meetings. He shall however be entitled to receive the agenda and the relevant papers for the meetings. The nominee shall also be entitled to call for and examine the books of accounts and ledgers besides cash books for the purpose of keeping himself informed about the financial matters of the company."

d. Condition No.6 shall be substituted to read as follows:-

"The Aggarwal Group shall furnish property security in the sum of Rs.1.50 crores (Rupees one crore fifty lakhs) within

3 (three) months to the satisfaction of the Registrar, High Court of Delhi, in addition to a bank guarantee in the sum of Rs.50 lakhs (Rupees fifty lakhs) to be furnished within 3(three) months from the date of this order, to meet any contingencies that might arise on account of the orders to be passed by the High Court or by this Court."

Subject to the above substations /modifications the order made by the High Court on 13.2.1995 and the conditions imposed shall continue to remain in force and shall be punctually obeyed till further orders.

We, however, clarify that the Aggarwal group shall not create any third party rights in respect of the property of Vinedale nor transfer the shares or create any encumbrance without the sanction of the High Court."

In view of the aforesaid orders, I am of the opinion that the petitioners are not entitled to

question the action of the Dena Bank before this Court as they have to take appropriate orders from the Delhi High Court only in the said pending suit. It is also brought to my notice that the fifth respondent in WP.No.1342 of 2006 filed an application challenging the 13(2) notice issued by the bank in I.A.Nos.8021 and 8023 of 2005 in CS (OS) No.1514 of 1994 wherein notice was issued to the respondent and ordered that any action taken will be subject to further of the said Court by order dated 07.10.2005.

As the petitioners and the fifth respondent in WP.No.1342 of 2006 are very anxious to settle the bank amount, I feel it appropriate to direct both the petitioners and the fifth respondent to approach the Delhi High Court and obtain appropriate orders in the pending suit as both the parties are not entitled to enter into any settlement with the bank for OTS without obtaining prior orders of the Delhi High Court.

The writ petitions are accordingly disposed of with a liberty to the petitioners and the fifth respondent in WP.No.1342 of 2006 to approach the Delhi High Court to obtain appropriate orders either for OTS with the Dena Bank or for questioning the action of the Dena Bank in initiating the recovery proceedings under the SARFAESI Act. So as to enable the petitioners and the fifth respondent to obtain appropriate orders before the Delhi High Court all the parties including the bank authorities are directed to maintain status quo in all aspects obtaining as on today for a period of three weeks. No costs.

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V. ESWARAIAH, J

January 28, 2006

DSK